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March 30, 2018

Via ECF filing

Hon. A. Kathleen Tomlinson
United States Magistrate
Judge United States District
Court Eastern District of New
York 100 Federal Plaza
Central Islip, NY 11722-9014

Re: *Castillo et al v. Perfume Worldwide et al.*

17- CV - 02972(JS)(AKT)

Dear Judge Tomlinson:

We are counsel for defendants in this FLSA case. We write this letter to respond promptly to the letter motion of plaintiff's counsel. At the outset, I wish to emphasize that we have worked cooperatively and have produced much information relating putative class. Below are defendants' responses to the handful of remaining points raised by the motion (in the order they were posed), which we hope will render the motion moot:

Interrogatories at Issue

INTERROGATORY NO. 1 Identify the name, last known phone number, last known address, dates of employment, regular rate(s) of pay (and dates on which those rates of pay were in effect) of all class members.

RESPONSE TO OBJECTION:

Plaintiffs' counsel first was provided with a link below which included all available information kept by defendants that is responsive to this Interrogatory.

<https://www.dropbox.com/s/a945s7o7w65yflt/Employee%20Personal%20Information.xlsx?dl=0>

Plaintiffs' counsel next was provided on March 20, 2018 with detailed spreadsheets obtained from ADP containing all the requested information, in the spreadsheet format requested by plaintiffs' counsel for the January 2014 through October 2016 time period. This production was again supplemented on March 30, 2017 with further documentation from ADP in the requested format for the November 2016 to the present time period. In two conversations with ADP, during which plaintiffs' counsel on the call and was

given full opportunity to speak directly to ADP representatives and ask whatever he wished, ADP confirmed that the above constituted all their available data, although ADP has been sole payroll provider throughout the class period. In addition to the foregoing, plaintiffs' counsel was provided with a spreadsheet containing available payroll information maintained directly by the defendants including for the May 2011 to December 2014 period for which ADP did not retain records although it was the service provider. Defendants have produced everything they and ADP have that responds to this request.

INTERROGATORY NO. 4 Identify the individual(s) or company(ies) that created, printed and/or issued paychecks for Perfume Worldwide during the relevant time period, and the time period during which each individual or company created, printed and/or issued the paychecks. In so identifying, provide the individual or company's last known address, last known telephone number, and the name and address of the representative/account manager.

RESPONSE TO OBJECTION:

ADP has been the company using for printing paychecks for Perfume Worldwide for the entire requested period and as conceded by plaintiffs' counsel, he was twice put in touch with ADP account representatives to obtain all needed information, after complaining of the deficiency in response no. 4, and on request was provided with the names of the representatives spoken to, but notably did not ask for any of the other information he now complains has not been furnished

After receiving plaintiffs' letter motion, defendants reached out to ADP and can now supplement the information responsive to this interrogatory as follows:

*Automatic Data Processing, Inc.
One ADP Boulevard
Roseland, New Jersey 07068*

*ADP Workforce Support
Julie Cahill | Account Manager,
844-335-8232 office*

*ADP Run Payroll Support
844-227-5237*



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INTERROGATORY NO. 6 Please identify by Software Publisher, Software Name, and Software version all software used by Perfume Worldwide during the relevant time period to

(a) record the beginning of the workday, break or meal periods, end of workday, (b) compute hours worked, (c) compute gross wages, deductions from wages, and net pay, or (d) otherwise used to process payroll for or make wage payments to the class. For each software program so identified, please state the dates when the software was used and briefly describe its function.

RESPONSE TO OBJECTION:

Plaintiffs' counsel was previously advised that Finger Tec is used for clocking in and out for employees, and that total hours are submitted to ADP for processing the payroll, with ADP calculating gross wages, deductions from wages, and net pay. ADP has been the company using for printing paychecks for Perfume Worldwide for the entire requested period and as conceded by plaintiffs' counsel, he was twice put in touch with ADP account representatives to obtain all needed information, after complaining of the deficiency in response to this interrogatory and on request was provided with the names of the representatives spoken to, but notably did not ask for any of the other information he now complains has not been furnished.

Since receiving plaintiffs' letter motion, defendants have obtained this additional responsive information:

Finger Tec TCMS- Version2

This software is used to clocking hours of employees and each week defendants download hours from the clocking machine and submit the hours to ADP for processing payroll.

INTERROGATORY NO. 7 To the extent not already furnished in response to a prior interrogatory, please identify each individual or company who furnished "Software as a service" or "on-demand software" used by Perfume Worldwide during the relevant time period to compute (a) record the beginning of the workday, break or meal periods, end of workday, (b) compute hours worked, (c) compute gross wages, deductions from wages, and net pay, or (d) otherwise used to process payroll for or make wage payments to the class. State the address and telephone number of each individual or company so identified, and the dates on which the individual or company furnished the software as a service to Perfume Worldwide.

RESPONSE TO OBJECTION:

Plaintiffs' counsel was previously advised that Finger Tec is used for clocking in and out for employees, and that total hours are submitted to ADP for processing the payroll, with ADP calculating gross wages, deductions from wages, and net pay. ADP has been the company using for printing paychecks for Perfume Worldwide for the entire requested

period and as conceded by plaintiffs' counsel, and he was twice put in touch with ADP account representatives to obtain all needed information, after complaining of the deficiency in response to this interrogatory, and on request was provided with the names of the representatives spoken to, but notably did not ask for any of the other information he now complains has not been furnished. Since receiving plaintiffs' letter motion, defendants have obtained this additional responsive information:

Finger Tec TCMS- Version2

This software is used to clocking hours of employees and each week defendants download hours from the clocking machine and submit the hours to ADP for processing payroll.

INTERROGATORY NO. 9 Identify each electronic database, data table or data file that you now maintain or have maintained during the relevant time period in the ordinary course of business which contains information regarding the names, addresses, telephone numbers, time/punch records, or records regarding the computation of or payment of wages to the class members. For each such electronic data entity, identify the following:

- (i) the name or title of each such database, data table, or data file;
Stored in Excel database
- (ii) the native software used to access and utilize such data entities;
- (iii) describe the structure of each database, data table or data file identified in response to Request No. 2(a) above and identify all files or tables in each such database, data table or data file. For each such file or table, identify all fields and for each field describe its contents, format and location within each file or table record or row.
Stored in Excel database
- (iv) the current or former employee(s) with the most knowledge of the operation or use of each data entity identified above; and
- (v) the custodian(s) of such data entity.

RESPONSE TO OBJECTION:

Plaintiffs were provided with Employees information in excel database and clocking time also was set forth in a separate excel file which is listed below

Employee Personal Information

<https://www.dropbox.com/s/a945s7o7w65yflt/Employee%20Personal%20Information.xlsx?dl=0>

Employee Hours Information



<https://www.dropbox.com/s/23o9e72w4dr4qcr/Total%20Employee%20Hours.xlsx?dl=0>

Again, plaintiffs' counsel was twice put in touch with ADP account representatives to obtain all needed information, after complaining of the deficiency in response to this interrogatory, and on request was provided with the names of the representatives spoken to, but notably did not ask for any of the other information he now complains has not been furnished.

Since being served with plaintiffs' letter motion, defendants can further elaborate their response to this Interrogatory as follows:

Finger Tec TCMS- Version2 is the software used to record the employees hours and this software provides the option to download the hours as recoded by the associated machine link to this software application. Once downloading these hours from this machine, an excel format will be created as has been produced to plaintiffs in this action. It is this file that is saved for payroll records as well as for processing payroll with ADP

Defendants use an excel database for storing the employee clocking hours, which is format downloaded from the Finger Tech Machine.

- *defendants store this excel information in a location on site computer / server*
- *Each week, hours are added with previous weeks' file after the data is downloaded for the new week information from Finger Tec application*
- *Thomas Kannathara maintains this file for payroll and for any reference*
- *Finger Tec has information stored that is recorded in the excel database based on the excel file size*

INTERROGATORY NO. 18 Please identify your ADP representative, the Region of ADP serving you, and your company code(s).

RESPONSE TO OBJECTION:

Plaintiffs' counsel was advised that the ADP company Code was T82. Again, plaintiff's counsel was twice put in touch with ADP account representatives to obtain all needed information, after complaining of the deficiency in response to this interrogatory, and on request was provided with the names of the representatives spoken to, but notably did not ask for any of the other information he now complains has not been furnished.

Since being served with plaintiffs' letter motion, defendants are able to supplement their response to this Interrogatory with the following information:

ADP Company Code: T82

*Julie Cahill | Account Manager,
Major Account East Up region*

844-335-8232 office

INTERROGATORY NO. 19 Please describe all measures that were used to validate ESI collected or exported from databases that was produced in response to Plaintiffs' First Request for Production of Documents to ensure completeness and accuracy of the data acquisition.

RESPONSE TO OBJECTION:

Defendants erroneously responded to this request by noting that Plaintiff's counsel was advised that total hours for each Employees is set forth in paycheck remittance information, which includes their wage rate and total wages for that time period and their net pay.

However, defendants undertook all steps necessary and required to validate ESI in connection with discovery requirements, including counsel review.

Document Requests at issue

19. Documents for each pay period for each class member concerning the regular hours paid, overtime hours paid, regular wages, overtime wages, other compensation, gross wages, deductions, and net wages.

RESPONSE TO OBJECTION:

Defendants have produced all available all ADP data regarding the Gross payroll, Net payroll, total hours and how much was paid for regular time and how much for overtime for each pay period. This information was provided to plaintiffs' counsel in two separate submissions – first for 2014 to Oct 2016 and next on March 30, 2018 for the time period of November 2016 to the present,

In addition, for the missing time periods, that ADP did not keep (2011-2014) defendants provided an excel spreadsheet with total hours which conforms to the data that the ADP had for the employees.

22. Copies of all wage notices furnished to named plaintiffs.

RESPONSE TO OBJECTION:

The wage notices defendants submitted were for the employees who were active. Seasonal employees, who by far comprise the majority of the



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putative claim, are temporary, hired for the December season time and terminated after the season ends so that their information in each individual enrollment file. Defendants are working on copying and producing these documents and respectfully request 14 days to complete this task.

23. Copies of all wage notices furnished to the class.

RESPONSE TO OBJECTION:

The wage notices defendants submitted were for the employees who were active. Seasonal employees, who by far comprise the majority of the putative claim, are temporary, hired for the December season time and terminated after the season ends so that their information in each individual enrollment file. Defendants are working on copying and producing these documents and respectfully request 14 days to complete this task.

24. All bank statements for any bank account used to pay the Plaintiffs or Class during the relevant time period.

RESPONSE TO OBJECTION:

Defendants in error initially stated that they produced bank statement. In fact, none were produced because the statements do not list employee names or amounts - ADP debits the bank account but in one lump sum amount for all the direct deposit option employees, which is the vast majority of employees. This is evidenced by the bank statements produced to plaintiffs' counsel since receiving his letter motion.

25. All bank reconciliation statements for any bank account used pay to Plaintiffs or Class.

RESPONSE TO OBJECTION:

Defendants in error initially stated that they produced bank statement. In fact, none were produced because the statements do not list employee names or amounts - ADP debits the bank account but in one lump sum amount for all the direct deposit option employees, which is the vast majority of employees. This is evidenced by the bank statements produced to plaintiffs' counsel since receiving his letter motion.

27. All documents concerning the systems and software used for the calculation of regular wages, overtime wages, spread of hours pay, deductions from wages, and net pay, including, but not limited to,

contracts, instruction manuals, training manuals and materials and user manuals.

RESPONSE TO OBJECTION:

Plaintiff's counsel was advised that ADP Workforce is using for payroll processing.

There are no responsive documents other than the actual reports which do in a sense "concern the software."

Defendants have further elaborated since the letter motion regarding the processes involved in payroll processing as follows:

Finger Tec TCMS- Version2 is the software used to record the employees' hours and this software provides the option of downloading those hours, which is then recoded by the associated machine link to this software application. After downloading these hours from this machine, an excel format will be created as produced to plaintiff's counsel in this action. It is this file which is saved this file for payroll records as well as for processing payroll with ADP.

The total hours for each employee, are submitted to ADP, and defendants calculate the regular Hours as 40 hours in a week and anything more than 40 hours as over time, and then send this information to the ADP for processing as payroll.

28. All documents concerning the equipment identified in response to interrogatory No. 5, including, but not limited to, contracts, agreements, instruction manuals, training materials and manuals, and user manuals.

RESPONSE TO OBJECTION:

There are no responsive documents available to defendants. However, Defendants have further elaborated since the letter motion regarding the processes involved in payroll processing as follows:

Finger Tec TCMS- Version2 is the software used to record the employees' hours and this software provides the option of downloading those hours, which is then recoded by the associated machine link to this software application. After downloading these hours from this machine, an excel format will be created as produced to plaintiff's counsel in this action. It is this file which is saved this file for payroll records as well as for processing payroll with ADP.

The total hours for each employee, are submitted to ADP, and defendants calculate the regular Hours as 40 hours in a week and anything more than 40 hours as over time, and then send this information to the ADP for processing as payroll.



29. All documents concerning the software identified in response to interrogatory No. 6, including, but not limited to, contracts, agreements, instruction manuals, training materials and manuals, user manuals.

RESPONSE TO OBJECTION:

There are no responsive documents available to defendants. However, Defendants have further elaborated since the letter motion regarding the processes involved in payroll processing as follows:

Finger Tec TCMS- Version2 is the software used to record the employees' hours and this software provides the option of downloading those hours, which is then recoded by the associated machine link to this software application. After downloading these hours from this machine, an excel format will be created as produced to plaintiff's counsel in this action. It is this file which is saved this file for payroll records as well as for processing payroll with ADP.

The total hours for each employee, are submitted to ADP, and defendants calculate the regular Hours as 40 hours in a week and anything more than 40 hours as over time, and then send this information to the ADP for processing as payroll.

30. All documents concerning the software as a service identified in response to interrogatory No. 7, including, but not limited to, contracts, agreements, instruction manuals, training materials and manuals, and user manuals.

RESPONSE TO OBJECTION:

There are no responsive documents available to defendants. However, Defendants have further elaborated since the letter motion regarding the processes involved in payroll processing as follows:

Finger Tec TCMS- Version2 is the software used to record the employees' hours and this software provides the option of downloading those hours, which is then recoded by the associated machine link to this software application. After downloading these hours from this machine, an excel format will be created as produced to plaintiff's counsel in this action. It is this file which is saved this file for payroll records as well as for processing payroll with ADP.

The total hours for each employee, are submitted to ADP, and defendants calculate the regular Hours as 40 hours in a week and anything more than 40 hours as over time, and then send this information to the ADP for processing as payroll.

34. All documents concerning Defendants' Tenth Affirmative Defense that Defendants believed in good faith, and had reasonable grounds to believe that Plaintiffs were properly paid per the requirements of the FLSA and NYLL."

RESPONSE TO OBJECTION:

All available Employee manuals generated by or for Perfume Worldwide were produced. In addition, since the March 30, 2018 letter motion, defendants produced the 2011 Perfume Center of America Inc. handbook which is referenced in the letter motion.

41. Documents concerning the total number of employees of Perfume Worldwide during the relevant time period, including, but not limited to, redacted payroll tax returns.

RESPONSE TO OBJECTION:

Defendants produced all information regarding employees was produced in the below link:

<https://www.dropbox.com/s/a945s7o7w65yflt/Employee%20Personal%20Information.xlsx?dl=0>

Since receiving the letter motion, defendants also have produced NYS 245 payroll tax filings, and are in the process of obtaining further filings for the class period stemming back 7 years, and respectfully request 14 days to produce same. The request at issue did not request the production of tax filings but we shall produce them.

Conclusion

The above documentation and information, to the extent not previously supplied, was urgently obtained today promptly in response to the letter motion, and thereupon was promptly furnished to plaintiffs' counsel before submission of this response.

We respectfully request that the motion be denied and thank Your Honor for your valuable attention.

Respectfully submitted,
Jacques Catafago
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